

No. 47963-0-II

COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

vs.

John Ragland,

Appellant.

Thurston County Superior Court Cause No. 13-1-01628-5

The Honorable Judge Mary Wilson

Appellant's Corrected Opening Brief

Jodi R. Backlund
Manek R. Mistry
Skylar T. Brett
Attorneys for Appellant

BACKLUND & MISTRY
P.O. Box 6490
Olympia, WA 98507
(360) 339-4870
backlundmistry@gmail.com

TABLE OF CONTENTS

TABLE OF CONTENTS	i
TABLE OF AUTHORITIES	iii
ISSUES AND ASSIGNMENTS OF ERROR.....	1
STATEMENT OF FACTS AND PRIOR PROCEEDINGS.....	6
ARGUMENT.....	12
I. The court’s instructions deprived Mr. Ragland of his right to a unanimous verdict.	12
II. Prosecutorial misconduct deprived Mr. Ragland of a fair trial.	15
A. The prosecutor committed misconduct by directly asking Mr. Ragland whether his children were lying.	16
B. The prosecutor committed misconduct by misstating the law regarding jury unanimity in this multiple acts case. 18	
C. The prosecutor committed misconduct by encouraging the jury to convict Mr. Ragland for multiple charges even absent evidence of separate and distinct acts supporting each count.	20
D. The prosecutor committed misconduct by minimizing and mischaracterizing the state’s burden of proof.	23
E. The prosecutor committed misconduct by disparaging the role of defense counsel.....	25

F.	The cumulative effect of the prosecutor’s misconduct deprived Mr. Ragland of a fair trial.	27
III.	I.M.R. was not competent to testify because she demonstrated an inability to differentiate what was true from what was not.....	28
IV.	The court erred by ordering Mr. Ragland to pay over \$2,000 in extradition costs.	30
V.	The court erred by scoring each of Mr. Ragland’s convictions separately for sentencing purposes.	32
A.	Mr. Ragland’s convictions incest convictions comprised the same criminal conduct as each underlying offense.....	33
B.	Mr. Ragland’s attorney provided ineffective assistance by failing to argue that count I and V as well as counts III and VI comprised the same criminal conduct for sentencing purposes.	34
CONCLUSION		35

TABLE OF AUTHORITIES

FEDERAL CASES

<i>Apodaca v. Oregon</i> , 406 U.S. 404, 92 S.Ct. 1628, 32 L.Ed.2d 184 (1972)	13
<i>Crawford v. Washington</i> , 541 U.S. 36, 124 S.Ct. 1354, 158 L.Ed.2d 177 (2004).....	30
<i>Gardner v. Florida</i> , 430 U.S. 349, 97 S.Ct. 1197, 51 L.Ed.2d 393 (1977)	34

WASHINGTON STATE CASES

<i>Brunson v. Pierce Cnty.</i> , 149 Wn. App. 855, 205 P.3d 963 (2009)....	33, 34
<i>In re Glasmann</i> , 175 Wn.2d 696, 286 P.3d 673 (2012)... 15, 16, 17, 18, 20, 22, 25, 27	
<i>Matter of Dependency of A.E.P.</i> , 135 Wn.2d 208, 956 P.2d 297 (1998)..	30
<i>State v. Allen</i> , 182 Wn.2d 364, 341 P.3d 268 (2015).....	19, 20, 21, 22, 23
<i>State v. Blazina</i> , 182 Wn.2d 827, 344 P.3d 680 (2015).....	31, 32
<i>State v. Boehning</i> , 127 Wn. App. 511, 111 P.3d 899 (2005).....	16
<i>State v. Borsheim</i> , 140 Wn. App. 357, 165 P.3d 417 (2007).....	21, 22, 23
<i>State v. C.J.</i> , 148 Wn.2d 672, 63 P.3d 765 (2003).....	29
<i>State v. Coleman</i> , 159 Wn.2d 509, 150 P.3d 1126 (2007).....	13, 14, 15, 19
<i>State v. Elmore</i> , 155 Wn.2d 758, 123 P.3d 72 (2005)	13
<i>State v. Gonzales</i> , 111 Wn. App. 276, 45 P.3d 205 (2002)	26
<i>State v. Johnson</i> , 158 Wn. App. 677, 243 P.3d 936 (2010) <i>review denied</i> , 171 Wn.2d 1013, 249 P.3d 1029 (2011).....	23, 24, 25

<i>State v. Karpenski</i> , 94 Wn. App. 80, 971 P.2d 553 (1999).....	29
<i>State v. Kiser</i> , 87 Wn. App. 126, 940 P.2d 308 (1997).....	13
<i>State v. Moultrie</i> , 143 Wn. App. 387, 177 P.3d 776 (2008)	13
<i>State v. Osman</i> , No. 71844-4-1, --- Wn. App. ---, --- P.3d --- (Jan. 25, 2016).....	24
<i>State v. Phuong</i> , 174 Wn. App. 494, 299 P.3d 37 (2013).....	33, 35
<i>State v. Pierce</i> , 169 Wn. App. 533, 280 P.3d 1158 (2012).....	16
<i>State v. Ramos</i> , 164 Wn. App. 327, 263 P.3d 1268 (2011)	17, 18
<i>State v. Thorgerson</i> , 172 Wn.2d 438, 258 P.3d 43 (2011)	26, 27
<i>State v. Vike</i> , 125 Wn.2d 407, 885 P.2d 824 (1994).....	35
<i>State v. Walker</i> , 164 Wn. App. 724, 265 P.3d 191 (2011), <i>as amended</i> (Nov. 18, 2011), <i>review granted, cause remanded</i> , 175 Wn.2d 1022, 295 P.3d 728 (2012).....	27, 28
<i>State v. Zillyette</i> , 178 Wn.2d 153, 307 P.3d 712 (2013).....	13

CONSTITUTIONAL PROVISIONS

U.S. Const. Amend. VI	3, 4, 15
U.S. Const. Amend. XIV	1, 15
Wash. Const. art. I, § 21.....	1, 13
Wash. Const. art. I, § 22.....	15

WASHINGTON STATUTES

RCW 10.01.160	31
RCW 5.60.050	29
RCW 9.94A.525.....	33

RCW 9.94A.589..... 33, 34

RCW 9A.44.120..... 30

OTHER AUTHORITIES

American Bar Association Standards for Criminal Justice 16

GR 34..... 32

RAP 2.5..... 13

ISSUES AND ASSIGNMENTS OF ERROR

1. The court's instructions deprived Mr. Ragland of his Wash. Const. art. I, § 21 right to a unanimous verdict
2. The court erred by giving Instruction No. 22.
3. The court erred by failing to instruct the jury that it had to unanimously agree as to which specific act had been proved to support each of Mr. Ragland's charges.

ISSUE 1: When the state relies on evidence of multiple alleged acts to support a single charge, the court must instruct the jury that it has to unanimously agree that a specific act has been proved in order to convict. Did the court violate Mr. Ragland's right to unanimity by instructing the jury that it need only be unanimous regarding a specific underlying act for three out of the six charges?

4. Prosecutorial misconduct deprived Mr. Ragland of his Fourteenth Amendment right to a fair trial.
5. The prosecutor committed misconduct by directly asking Mr. Ragland whether the alleged victims were lying.
6. The court erred by overruling Mr. Ragland's objection to the prosecutor's question about whether I.M.R. and S.D.R. were lying.

ISSUE 2: A prosecutor commits misconduct by asking the accused whether a witness is lying. Did the prosecutor commit misconduct by directly asking Mr. Ragland whether he was accusing his children of lying?

7. The prosecutor committed misconduct by misstating the law regarding the unanimity requirement.
8. The prosecutor committed misconduct by encouraging jurors to ignore the court's instructions.

ISSUE 3: A prosecutor commits misconduct by misstating the law to the jury. Did the prosecutor commit misconduct by arguing that the unanimity instruction did not apply to one of the charges explicitly included in its language?

9. The prosecutor committed misconduct by arguing that jurors could convict on two counts of molestation based on a single act.

ISSUE 4: To avoid double jeopardy violations, the jury must base multiple convictions for the same offense on “separate and distinct acts.” Did the prosecutor commit misconduct by arguing that jurors could convict for two counts of child molestation against S.D.R. if they concluded that he had committed a single act?

10. The prosecutor committed misconduct by minimizing and mischaracterizing the state’s burden of proof to the jury.
11. The prosecutor committed misconduct by telling jurors that they had an abiding belief if they believed the alleged victims when they walked out of the courthouse.
12. The prosecutor committed misconduct by telling jurors that they were convinced beyond a reasonable doubt if they believed that the children had “suffered at the hands of their father.”

ISSUE 5: To convict for any charge, the jury must have an abiding belief in the defendant’s guilt. Did the prosecutor commit misconduct by telling jurors they had an abiding belief if they believed the alleged victims when they walked out of the courthouse?

ISSUE 6: To convict, jurors must believe that each element has been proved beyond a reasonable doubt should convict if they believed that I.M.R. and S.D.R. had “suffered”?

13. The prosecutor committed misconduct by disparaging the role of defense counsel.

ISSUE 7: A prosecutor commits misconduct by reframing the defense theory as an attempt to get jurors to “look over here but not over here.” Did the prosecutor at Mr. Ragland’s trial commit misconduct by making that exact argument to the jury?

14. The cumulative effect of the prosecutor’s misconduct deprived Mr. Ragland of a fair trial.

ISSUE 8: The cumulative effect of repeated instances of prosecutorial misconduct can require reversal even when individual arguments would not. Do the prosecutor’s repeated and varied improper questions and arguments require reversal of Mr. Ragland’s convictions?

15. The court abused its discretion by ruling that I.M.R. was competent to testify at trial.
16. The court erred by entering finding of fact 8(a). Findings of Fact and Conclusions of Law, Supp. CP.
17. The court erred by entering finding of fact 8(b). Findings of Fact and Conclusions of Law, Supp. CP.
18. The court erred by entering finding of fact 8(c). Findings of Fact and Conclusions of Law, Supp. CP.
19. The court erred by entering finding of fact 8(d). Findings of Fact and Conclusions of Law, Supp. CP.
20. The court erred by entering conclusion of law 2. Findings of Fact and Conclusions of Law, Supp. CP.
21. Because I.M.R. is not competent to testify, the court violated Mr. Ragland’s Sixth Amendment right to confrontation by admitting her testimonial hearsay.
22. Because I.M.R. is not competent to testify, the court violated the child hearsay statute by admitting hearsay statements without first determining whether they were sufficiently corroborated.

ISSUE 9: A child witness is incompetent to testify if s/he demonstrates an inability to differentiate truth from falsity. Did the court err by finding I.M.R. competent after she told numerous untrue stories on the witness stand during the competency hearing?

23. The court erred by ordering Mr. Ragland to pay over \$2,000 in discretionary legal financial obligations absent any inquiry into whether he had the means to do so.

24. The court erred by entering finding of fact 2.5. CP 356.

ISSUE 10: A court may not order a person to pay discretionary legal financial obligations (LFOs) without conducting an individualized inquiry into his/her means to do so. Did the court err by ordering Mr. Ragland to pay over \$2,000 in LFOs over his objection while also finding him indigent and without analyzing whether he had the money to pay?

25. The court erred by scoring each of Mr. Ragland's convictions separately for sentencing purposes.

26. Counts I and V should have scored as the same criminal conduct.

27. Counts III and VI should have scored as the same criminal conduct.

ISSUE 11: Two offenses should not increase each other's offender scores if they involve the same criminal intent, same victim, and are committed at the same time and place. Did the court err by scoring each of Mr. Ragland's incest charges separately from the underlying rape and molestation charges?

28. Mr. Ragland was denied his Sixth Amendment right to the effective assistance of counsel at sentencing.

29. Mr. Ragland's attorney provided ineffective assistance by stipulating to an improperly-calculated offender score.

ISSUE 12: Defense counsel provides ineffective assistance by stipulating to an improperly-calculated offender score. Did Mr. Ragland's attorney provide ineffective assistance by stipulating

to his offender score that failed to properly score several offenses as same criminal conduct?

STATEMENT OF FACTS AND PRIOR PROCEEDINGS

Mr. Ragland had a contentious relationship with his wife, Bonnie¹. RP (7/9/15) 430. The couple argued about money and his drinking. RP (7/9/15) 430. By the end of 2011, Mr. Ragland had become physically abusive. RP (7/9/15) 429-431.

Mr. Ragland was arrested on Christmas night 2011 and convicted of misdemeanor assault against Bonnie. RP (7/9/15) 432. He did not see his wife or three children again for several years after that. RP (7/9/15) 457.

In 2012, Bonnie petitioned for and got a protection order prohibiting Mr. Ragland from contacting his children. Ex. 4. Even so, Bonnie was afraid that Mr. Ragland would try to contact the children or seek custody. RP (7/9/15) 434.

That order expired in spring of 2013. RP (7/9/15) 435; Ex. 4.

About a month after the protection order expired, Bonnie went to her sister's house (next door) with her two oldest children, I.M.R. and S.D.R. RP (7/9/15) 418, 435. Bonnie told her sister that the children told her that Mr. Ragland had sexually abused them. RP (7/9/15) 418.

¹ Bonnie Ragland's first name is used to differentiate her from Mr. Ragland. No disrespect is intended.

I.M.R. told her mother and aunt that Mr. Ragland had abused both her and S.D.R. RP (7/9/15) 416-417. She also claimed that Mr. Ragland had made the children have sexual contact with each other. RP (7/9/15) 416-417, 419.

The state charged Mr. Ragland with three counts of child molestation in the first degree, one count of rape of a child in the first degree, and two counts of incest. CP 3-4.

The children were interviewed by a doctor at a sexual assault clinic. RP (7/9/15) 552. I.M.R. told the doctor that she wanted the police to take her father and her “mean teacher” to jail. RP (7/9/15) 584.

I.M.R. was eleven years old at the time of trial. RP (7/8/15) 178. She has developmental delays and is in special education at school. RP (7/9/15) 419-420.

At a competency hearing, I.M.R. testified that she had hidden cameras watching everyone:

I.M.R.: First off, I want to tell you something that is not true. That is really true. I have hidden –

PROSECUTOR: Is it true or not true?

I.M.R.: I have secret little cameras that are really tiny.

PROSECUTOR: Is that a story?

I.M.R.: No.

PROSECUTOR: No?

I.M.R.: And I am watching all of you. And I have them everywhere on earth.

PROSECUTOR: Okay.

I.M.R.: I am even watching you, and right now is there any hidden cameras here?

PROSECUTOR: No, there are no hidden cameras in here. [I.M.R.], you said you graduated from elementary school?

I.M.R.: Yes. And now I have hidden cameras everywhere, and hidden cameras on here, here, here, here, here, and all over everybody.

RP (6/15/15) 32-33.

I.M.R. also testified that Mr. Ragland had once abused her in the bathroom at Top Foods. RP (6/15/15) 35-36. She said that her mother walked in, saw him doing it, and told Mr. Ragland that he was a “jerk.” RP (6/15/15) 36.

I.M.R.’s mother, Bonnie, testified that she never walked in on an incident in a Top Food’s bathroom or called Mr. Ragland a jerk. RP (6/17/15) 149-150.

I.M.R. told a sheriff’s deputy that a strange woman bit Mr. Ragland’s “weiner” in the Top Food’s bathroom. RP (6/17/15) 36. I.M.R. later said that she had actually “bit his weiner” herself. RP (7/7/15) 109.

I.M.R. told a defense investigator that Mr. Ragland’s abuse had ripped stitches that she’d had in her vaginal area. RP (7/13/15) 664-666.

During the competency hearing, I.M.R.'s mother testified that I.M.R. had never had stitches. RP (6/17/15) 163. This was confirmed by a doctor. RP (7/9/15) 46.

The court found that I.M.R. testified to some things that were not true at the competency hearing. Findings of Fact and Conclusions of Law, Supp. CP. Still, the court found that those untruths went to her credibility, not to the admissibility of her testimony. Findings of Fact and Conclusions of Law, Supp. CP. The court found her competent to testify. Findings of Fact and Conclusions of Law, Supp. CP.

At trial, I.M.R. testified that her father had made her drink beer. RP (7/8/15) 188. Then she said that was not actually true. RP (7/8/15) 189. She said she had watched a movie recently about kids drinking beer. RP (7/8/15) 189. Then she started burping in response to the prosecutor's questions. RP (7/8/14) 189.

S.D.R. testified that Mr. Ragland had never made him and I.M.R. engage in sexual contact with one another. RP (7/8/15) 311.

At the close of her testimony, I.M.R. said "[S.D.R.] never got abused." RP (7/8/15). Then she asked, "why is [S.D.R.] here?" RP (7/18/15) 384.

Mr. Ragland testified at trial. RP (7/13/15) 737-743. He denied all of the accusations against him. RP (7/13/15) 737-743.

On cross-examination, the prosecutor asked Mr. Ragland whether he was accusing the children of lying. RP (7/13/15) 743. Mr. Ragland objected to the question but the court overruled his objection. RP (7/13/15) 743.

The prosecutor again asked Mr. Ragland, “You’re saying they’re lying?” RP (7/13/15) 743. Mr. Ragland was forced to respond. RP (7/13/15) 743.

The court instructed the jury about the need to unanimously agree as to which allegations had been proved:

The state alleges that the defendant committed acts of Child Molestation in the First Degree on multiple occasions. To convict the defendant on any count of Child Molestation in the First Degree, one particular act of Child Molestation in the First Degree must be proved beyond a reasonable doubt, and you must unanimously agree as to which act has been proved. You need not unanimously agree that the defendant committed all the acts of Child Molestation in the First Degree.
CP 275.

The court did not instruct the jury that it had to unanimously agree regarding which acts had been proved to support the rape or incest charges. CP 251-277.

In closing, the prosecutor reiterated Mr. Ragland’s response to the question about whether the children were lying:

... defendant got up on the stand and testified and talked about how his kids aren’t liars, he wouldn’t call them a liar [sic], but he

got angry with me when I asked the question. He got angry with me and said they were put up to it.
RP (7/13/15) 775.

The prosecutor described the state's burden as follows:

Ladies and gentlemen, if you walk out of here and say, 'I believe those kids,' that's an abiding belief. That's beyond a reasonable doubt."
RP (7/13/15) 776.

The prosecutor also told the jury that they should convict Mr. Ragland of all charges if they have an abiding belief that the children had "suffered at the hands of their father." RP (7/13/15) 817.

The prosecutor told the jury that counts III and IV – each for alleged molestation of S.D.R. – were similar and the jury needed to believe only that Mr. Ragland either touched S.D.R.'s penis or that S.D.R. touched Mr. Ragland's penis. RP (7/13/15) 793.

In rebuttal argument, the prosecutor argued that the defense attorney was trying to divert the jury's attention from the real issues. RP (7/13/15) 817. She characterized the defense theory as follows: "Look over here and look over here and look over here. Don't look at what the kids actually said." RP (7/13/15) 817.

The jury convicted Mr. Ragland of all charges. CP 278-283.

At sentencing, the court scored each of Mr. Ragland's offenses against the other. CP 356. Defense counsel agreed with this calculation of his offender score in his sentencing memorandum. CP 324.

Mr. Ragland objected to all non-mandatory legal financial obligations (LFOs). RP (8/27/15) 9. He pointed out that he was indigent. RP (8/27/15) 9. The court did not conduct any inquiry into Mr. Ragland's financial situation. RP (8/27/15) 1-33. Even so, the court ordered him to pay \$2158.30 in extradition costs. CP 357.

This timely appeal follows. CP 327.

ARGUMENT

I. THE COURT'S INSTRUCTIONS DEPRIVED MR. RAGLAND OF HIS RIGHT TO A UNANIMOUS VERDICT.

Each charge was based on multiple alleged acts. In the state's closing, the prosecutor told the jury that they could choose from among numerous allegations to find him guilty of each charge. RP (7/13/15) 790-794.

Still, the jury was only instructed that it had to unanimously agree about which alleged act had been proven to support the child molestation charges. CP 275. The instructions did not tell jurors they had to unanimously agree regarding the underlying conduct for the rape of a child and incest charges.

Indeed, the jury likely understood the Instruction No. 22's limitation as an invitation to aggregate evidence of multiple alleged acts to find him guilty of the remaining charges even if they did not unanimously agree about a single incident.

The court's failure to give a unanimity instruction for the rape and incest charges violated Mr. Ragland's constitutional right to a unanimous verdict. *State v. Coleman*, 159 Wn.2d 509, 511, 150 P.3d 1126 (2007).

An accused person has a state constitutional right to a unanimous jury verdict.² Art. I, § 21; *State v. Elmore*, 155 Wn.2d 758, 771 n. 4, 123 P.3d 72 (2005). Before a defendant can be convicted, jurors must unanimously agree that he or she committed a specific criminal act. *Coleman*, 159 Wn.2d at 511.³

Where the prosecution introduces evidence of more than one act to support a single charge, the state must elect one act for conviction. If the prosecutor does not elect a single act, the court must provide a unanimity instruction as to that charge. *Id.* This requirement "protect[s] a criminal

² The federal constitutional guarantee of a unanimous verdict does not apply in state court. *Apodaca v. Oregon*, 406 U.S. 404, 406, 92 S.Ct. 1628, 32 L.Ed.2d 184 (1972).

³ Constitutional violations are reviewed *de novo*. *State v. Zillyette*, 178 Wn.2d 153, 161, 307 P.3d 712 (2013). A trial court's failure to provide a unanimity instruction is a manifest error affecting the constitutional right to a unanimous verdict. *State v. Moultrie*, 143 Wn. App. 387, 392, 177 P.3d 776 (2008); RAP 2.5(a)(3). Such errors can be raised for the first time on appeal. *Moultrie*, 143 Wn. App. at 392; *State v. Kiser*, 87 Wn. App. 126, 129, 940 P.2d 308 (1997).³

defendant's right to a unanimous verdict based on an act proved beyond a reasonable doubt." *Id.*

Failure to provide a unanimity instruction creates "the possibility that some jurors relied on one act or incident and some relied on another, resulting in a lack of unanimity on all of the elements necessary for a valid conviction." *Coleman*, 159 Wn.2d at 512. Such a possibility creates the risk that jurors will improperly aggregate evidence of multiple acts in convicting for a single count. *Id.*

Failure to provide a unanimity instruction in a multiple acts case gives rise to a presumption of prejudice. *Coleman*, 159 Wn.2d at 510. The presumption is overcome only if no rational juror could have a reasonable doubt as to any incident for which evidence was presented. *Id.*

In Mr. Ragland's case, each charge was based on multiple alleged acts. The court should have instructed the jury that it had to unanimously agree which alleged act had been proved beyond a reasonable doubt to support *every* charge. *Coleman*, 159 Wn.2d at 511. The court erred by failing to provide a unanimity instruction for the rape and incest charges. *Id.*

The state cannot overcome the presumption of prejudice arising from the court's failure to provide a unanimity instruction for the rape and

incest charges. *Coleman*, 159 Wn.2d at 510. Rational jurors could have had a reasonable doubt about any of the alleged incidents.

Both I.M.R. and S.D.R.'s stories changed significantly over time. *See e.g.* RP (7/9/15) 429, 437, 442, 444, 504, 512, 517, 520-521, 586; RP (7/13/15) 664-666, 672, 674-675, 681, 685. In fact, I.M.R. said at the end of her testimony that S.D.R. had never been abused. RP (7/18/15) 384.

The prosecutor also reiterated in closing that the unanimity requirement only applied to the child molestation charges. RP (7/13/15) 791-792. Mr. Ragland was prejudiced by the court's failure to provide a unanimity instruction for the rape and incest charges. *Coleman*, 159 Wn.2d at 510.

The court violated Mr. Ragland's right to a unanimous verdict by instructing the jury that it only had to unanimously agree which alleged act had been proved to support the child molestation charges. *Coleman*, 159 Wn.2d at 511. Mr. Ragland's other convictions must be reversed. *Id.*

II. PROSECUTORIAL MISCONDUCT DEPRIVED MR. RAGLAND OF A FAIR TRIAL.

Prosecutorial misconduct can deprive the accused of a fair trial. *In re Glasmann*, 175 Wn.2d 696, 703-704, 286 P.3d 673 (2012); U.S. Const. Amends. VI, XIV, Wash. Const. art. I, § 22. To determine whether a prosecutor's misconduct warrants reversal, the court looks at its

prejudicial nature and cumulative effect. *State v. Boehning*, 127 Wn. App. 511, 518, 111 P.3d 899 (2005). A prosecutor's improper statements prejudice the accused if they create a substantial likelihood that the verdict was affected. *Glasmann*, 175 Wn.2d at 704. The inquiry must look to the misconduct and its impact, not the evidence that was properly admitted. *Id.* at 711.

Prosecutorial misconduct during argument can be particularly prejudicial. There is a risk that jurors will lend it special weight “not only because of the prestige associated with the prosecutor's office but also because of the fact-finding facilities presumably available to the office.” *Glasmann*, 175 Wn.2d at 706 (quoting commentary to the *American Bar Association Standards for Criminal Justice* std. 3–5.8).

Prosecutorial misconduct requires reversal, even absent an objection below, if it is so flagrant and ill-intentioned that an instruction could not have cured the resulting prejudice. *State v. Pierce*, 169 Wn. App. 533, 552, 280 P.3d 1158 (2012). The misconduct here was flagrant and ill-intentioned, and could not have been cured.

- A. The prosecutor committed misconduct by directly asking Mr. Ragland whether his children were lying.

On cross-examination, the prosecutor asked Mr. Ragland directly whether, by denying the accusations against him, Mr. Ragland was

accusing his children of lying. RP (7/13/15) 743. The court overruled Mr. Ragland's objection to the question and he was forced to answer. RP (7/13/15) 743. During closing, the prosecutor revisited Mr. Ragland's answer, arguing that it was evidence of his guilt. RP (7/13/15) 775.

The prosecutor committed misconduct by asking Mr. Ragland to call his children liars. *State v. Ramos*, 164 Wn. App. 327, 334, 263 P.3d 1268 (2011).

A prosecutor commits misconduct by asking a witness whether another witness is lying. *Ramos*, 164 Wn. App. at 334. The accused is prejudiced by being required to testify about whether another witness is lying. *Id.*

Here, the prosecutor directly asked Mr. Ragland whether the children were lying. RP (7/13/15) 743. The prosecutor's question was improper. *Id.*

Mr. Ragland was prejudiced by the prosecutor's improper questioning. *Glasmann*, 175 Wn.2d at 704. Furthermore, the prosecutor brought the jury's attention back to the improper question and Mr. Ragland's answer during closing argument:

... defendant got up on the stand and testified and talked about how his kids aren't liars, he wouldn't call them a liar [sic], but he got angry with me when I asked the question. He got angry with me and said they were put up to it.
RP (7/13/15) 775.

From the record, it appears as though the prosecutor's allegation that Mr. Ragland "got angry" may refer to his attorney's objection – which should have been sustained – to the improper question. There is a substantial likelihood that the prosecutor's misconduct affected the outcome of Mr. Ragland's trial. *Id.*

The prosecutor committed misconduct by asking Mr. Ragland whether the children were lying and then focusing on his answer in closing argument. *Ramos*, 164 Wn. App. at 334. Mr. Ragland's convictions must be reversed. *Glasmann*, 175 Wn.2d at 704.

B. The prosecutor committed misconduct by misstating the law regarding jury unanimity in this multiple acts case.

The state presented evidence of multiple alleged acts to support each count against Mr. Ragland. But the prosecutor told the jury in closing that it did not have to unanimously agree as to which act underlay one of the counts.⁴ RP (7/13/15) 791-792. The prosecutor told the jury to ignore the court's instruction otherwise because it could convict Mr. Ragland for Count II even without agreeing unanimously on the underlying conduct. RP (7/13/15) 791-792.

⁴ As argued above, the court also erred by providing a unanimity instruction only for the child molestation charges.

The prosecutor committed misconduct by misstating the law regarding the unanimity requirement and encouraging the jury to ignore the court's instruction.

A prosecutor commits misconduct by misstating the law to the jury. *State v. Allen*, 182 Wn.2d 364, 373, 341 P.3d 268 (2015).

When the state presents evidence of more than one alleged act to support a single charge, the jury must unanimously agree that a single act has been proved beyond a reasonable doubt. *Coleman*, 159 Wn.2d at 511.

At Mr. Ragland's trial, the prosecutor told the jury that the court's unanimity instruction – which, by its language applied to each of the three child molestation charges – did not apply to Count II:

Now, the court instructed you about a unanimity instruction, and basically what that means is that any count of child molestation in the first degree, there are three of them, you have to decide unanimously on one particular act, that you believe one particular act occurred. *Well, for Count II that's not going to really apply because Count II deals with [I.M.R.]*.
RP (7/13/15) 791-792 (emphasis added).

But the jury was actually required to unanimously agree which of the numerous alleged incidents had been proved to support *each* charge.

Id. The prosecutor's misstatement of the law was improper argument.⁵

⁵ The prosecutor did mention later in her argument that the jury "get[s] to decide what [they] believe and it has to be unanimous." RP (7/13/15) 792. But that argument was in the context of outlining each allegation that supported the rape charge. That statement does not cure the prosecutor's very clear statement to the jury that the unanimity instruction did not apply to Count II.

Allen, 182 Wn.2d at 373. It misstated the law, and directly contradicted the court's instructions.

Mr. Ragland was prejudiced by the prosecutor's misstatement of the law. *Glasman*, 175 Wn.2d at 704. There were significant reasons to doubt I.M.R.'s credibility. But there were also numerous gruesome allegations against Mr. Ragland. The prosecutor's improper argument permitted the jury to overlook possible doubts regarding specific instances in order to aggregate the evidence and convict Mr. Ragland based on the inflammatory nature of the accusation. There is a substantial likelihood that the misconduct affected the outcome of Mr. Ragland's trial.

The prosecutor explicitly encouraged the jury to ignore the court's instruction. The misconduct was flagrant and ill-intentioned.

The prosecutor committed flagrant, ill-intentioned, prejudicial misconduct by misstating the law and encouraging the jury to ignore the court's instruction. *Allen*, 182 Wn.2d at 373. Mr. Ragland's convictions must be reversed. *Id.*

- C. The prosecutor committed misconduct by encouraging the jury to convict Mr. Ragland for multiple charges even absent evidence of separate and distinct acts supporting each count.

The court instructed the jury that it had to rely on separate and distinct acts to support each of the two charges for alleged molestation of S.D.R. CP 275.

But the prosecutor argued in closing that the jury had enough to convict for *both* counts if it believed *either* that Mr. Ragland had touched S.D.R. in appropriately *or* that he had forced S.D.R. to touch him. RP (7/13/15) 793.

The prosecutor committed misconduct by misstating the law regarding separate and distinct acts to the jury. *Allen*, 182 Wn.2d at 373.

When multiple counts of sexual abuse are alleged within the same charging period, the jury must rely on “separate and distinct” acts to convict for each count. *State v. Borsheim*, 140 Wn. App. 357, 367, 165 P.3d 417 (2007). This rule protects the accused’s right to be free from double jeopardy. *Id.*

At Mr. Ragland’s trial, the prosecutor told the jury that they only needed to find that either one of two alleged acts had occurred in order to convict for two counts of molestation:

[S.D.R.] give you a lot of information. [S.D.R.] provided you with the information you need to return a verdict of guilty on both Counts III and IV. Specifically, if you all believe that the defendant touched [S.D.R.]’s penis on one occasion in that date range, that’s sufficient. Or if you were to believe that the defendant made [S.D.R.] touch the defendant’s penis within that date range, that’s sufficient.
RP (7/13/15) 793.

The prosecutor’s argument was a misstatement of the law. Indeed, in order to convict Mr. Ragland for *both* Counts III and IV, the jury was

required to find that *both* separate and distinct allegations had been proved. *Borsheim*, 140 Wn. App. at 367. The prosecutor committed misconduct. *Allen*, 182 Wn.2d at 373.

There is a substantial likelihood that the prosecutor's improper argument affected the outcome of Mr. Ragland's case. *Glasmann*, 175 Wn.2d at 704. S.D.R. provided numerous inconsistent stories regarding whether he had ever been made to touch Mr. Ragland's penis. *See e.g.* RP (7/9/15) 512, 517, 520-521. Furthermore, I.M.R. testified that her brother had never been abused. RP (7/18/15) 384.

Upon hearing the prosecutor's explanation of the law, the jury could have convicted Mr. Ragland for both counts of molestation against S.D.R. even if they did not feel the state had proved two separate and distinct acts. Mr. Ragland was prejudiced by the prosecutor's misstatement of the law. *Id.*

The prosecutor's misconduct was flagrant and ill-intentioned. Again, the prosecutor encouraged the jury to ignore the court's instructions and to convict Mr. Ragland despite holes in the evidence.

The prosecutor committed flagrant, ill-intentioned, prejudicial misconduct by telling the jury that they could convict Mr. Ragland for both Counts III and IV if the state had proved *either* of two underlying

allegations. *Borsheim*, 140 Wn. App. at 367.; *Allen*, 182 Wn.2d at 373.

Mr. Ragland's convictions for Counts III and IV must be reversed. *Id.*

- D. The prosecutor committed misconduct by minimizing and mischaracterizing the state's burden of proof.

During closing argument, the prosecutor's described the state's burden of proof in the following way:

Ladies and gentlemen, if you walk out of here and say, 'I believe those kids,' that's an abiding belief. That's beyond a reasonable doubt."

RP (7/13/15) 776.

The prosecutor also told the jury that they should convict Mr. Ragland of all charges if they have an abiding belief that the children had "suffered at the hands of their father." RP (7/13/15) 817.

But "believing [the] kids" and thinking that they had "suffered at the hands of their father" are not the same as finding beyond a reasonable doubt that the state had proved each element of each charge against Mr. Ragland.

A prosecutor commits misconduct by minimizing the state's burden of proof to the jury. *State v. Johnson*, 158 Wn. App. 677, 685-86, 243 P.3d 936 (2010) *review denied*, 171 Wn.2d 1013, 249 P.3d 1029 (2011). Here, the prosecutor committed misconduct by mischaracterizing the beyond a reasonable doubt standard. *Id.*

An abiding belief has an extended duration. *See State v. Osman*, No. 71844-4-1, --- Wn. App. ---, --- P.3d ---, at *18 (Jan. 25, 2016). It lasts beyond when the jurors walk out of the courthouse. *Id.* The prosecutor minimized the state’s burden by arguing that an abiding belief need only last until the jurors left court.

Likewise, the jurors could have believed I.M.R. and S.D.R. but still harbored a reasonable doubt. They could have felt that the children’s testimony did not meet each element of each charge. Or the jury could have believed one version of the children’s inconsistent stories but not the others.

The prosecutor’s statement about “suffer[ing] at the hands of their father” was also improper. The jury could have believed that the children had “suffered” (such as due to physical abuse of their mother) while still holding a reasonable doubt as to charges of sexual abuse.

A prosecutor’s misstatement of the state’s burden of proof “constitutes great prejudice because it reduces the State's burden and undermines a defendant's due process rights.” *Johnson*, 158 Wn. App. at 685-86.

Here, the harm from prosecutor’s misstatement of the burden of proof is exacerbated by the misconduct (described above) that occurred when the prosecutor asked Mr. Ragland whether his children were lying.

Taken together, the prosecutor set up the question for the jury as one of whether the jury believed I.M.R. and S.D.R. rather than one of whether the state had proved each element beyond a reasonable doubt.

There is a substantial likelihood that the prosecutor's mischaracterization of the state's burden affected the outcome of Mr. Ragland's trial. *Glasmann*, 175 Wn.2d at 704.

In the face of inconsistent stories and significant credibility issues, the prosecutor chose to minimize the state's burden rather than to argue that the state's burden had been met. The prosecutor's misconduct was flagrant and ill-intentioned.

The prosecutor committed flagrant, ill-intentioned, prejudicial misconduct by mischaracterizing and minimizing the state's burden of proof in closing argument. *Johnson*, 158 Wn. App. at 685-86. Mr. Ragland's convictions must be reversed. *Id.*

E. The prosecutor committed misconduct by disparaging the role of defense counsel.

During his closing, Mr. Ragland pointed out the numerous inconsistencies in the children's stories and proposed that they had been coached by their mother who wanted to make sure that Mr. Ragland never reentered their lives. RP (7/13/15) 796-816.

In response, the prosecutor characterized this theory as asking the jury to: “Look over here and look over here and look over here. Don’t look at what the kids actually said.” RP (7/13/15) 817.

The prosecutor’s argument constituted misconduct.

A prosecutor commits misconduct by disparaging the role of defense counsel. *State v. Gonzales*, 111 Wn. App. 276, 282, 45 P.3d 205 (2002). Such an argument improperly attempts to “draw a cloak of righteousness” around the state’s case. *Id.*

For example, it is improper for a prosecutor to argue that the defense theory involves “sleight of hand” and asks the jury to “look over here, but don’t pay attention to there.” *State v. Thorgerson*, 172 Wn.2d 438, 451, 258 P.3d 43 (2011).

The prosecutor in Mr. Ragland’s case made almost exactly the same argument as that in *Thorgerson*. The argument was improper. *Id.*

Rather than focusing on the facts of the case, the prosecutor’s argument attempted to “draw the cloak of righteousness” around the state’s case by dismissing Mr. Ragland’s arguments as an attempt to divert the jury’s attention from the real issues in the case. *Id.*; *Gonzales*, 111 Wn. App. at 282.

The prosecutor's argument urged the jury to discount Mr. Ragland's valid defense theory. There is a substantial likelihood that the improper argument affected the jury. *Glasmann*, 175 Wn.2d at 704.

Prosecutorial misconduct is flagrant and ill-intentioned when it violates professional standards and case law that were available to the prosecutor at the time. *Glasmann*, 175 Wn.2d at 707.

Here, the prosecutor made the "look over here but not over here" argument four years after it was ruled improper in *Thorgeron*. *Thorgeron*, 172 Wn.2d at 451. The misconduct was flagrant and ill-intentioned.

The prosecutor at Mr. Ragland's trial committed flagrant, ill-intentioned, prejudicial misconduct by disparaging the role of defense counsel in closing. *Thorgeron*, 172 Wn.2d at 451. Mr. Ragland's convictions must be reversed.

F. The cumulative effect of the prosecutor's misconduct deprived Mr. Ragland of a fair trial.

The cumulative effect of repeated instances of prosecutorial misconduct can be "so flagrant that no instruction or series of instructions can erase their combined prejudicial effect." *State v. Walker*, 164 Wn. App. 724, 737, 265 P.3d 191 (2011), *as amended* (Nov. 18, 2011), *review granted, cause remanded*, 175 Wn.2d 1022, 295 P.3d 728 (2012).

At Mr. Ragland's trial, the prosecutor improperly asked Mr. Ragland directly whether the children were lying. She also misstated the law regarding unanimity and the requirement of basing different charges on separate and distinct acts. She mischaracterized and minimized the state's burden of proof and disparaged the role of defense counsel in closing argument.

Whether considered individually or in the aggregate, the prosecutor's improper arguments require reversal of Mr. Ragland's convictions. *Walker*, 164 Wn. App. at 737.

III. I.M.R. WAS NOT COMPETENT TO TESTIFY BECAUSE SHE DEMONSTRATED AN INABILITY TO DIFFERENTIATE WHAT WAS TRUE FROM WHAT WAS NOT.

I.M.R. testified at a competency hearing that she had hidden cameras "everywhere on earth." RP (6/15/15) 32-33. She said that this testimony was not a story but the truth. RP (6/15/15) 32.

She also said her mother had walked in on Mr. Ragland abusing her in the bathroom at Top Foods and called him a jerk. RP (6/15/15) 36. Her mother said that had never happened. RP (6/17/15) 149-150.

As a result, the court found that I.M.R. had testified to some things that were not true. Findings of Fact and Conclusions of Law, Supp. CP. Still, the court found her competent to testify at trial. Findings of Fact and Conclusions of Law, Supp. CP.

The court abused its discretion by permitting I.M.R. to testify at trial.

State v. Karpenski, 94 Wn. App. 80, 101, 971 P.2d 553 (1999) *abrogated on other grounds by State v. C.J.*, 148 Wn.2d 672, 63 P.3d 765 (2003).

Witnesses “who appear incapable of receiving just impressions of the facts, respecting which they are examined, or of relating them truly” are not competent to testify. RCW 5.60.050(2).

Before a child witness can be deemed competent, the court must determine:

(a) whether the witness has the capacity to understand simple questions about the event; (b) whether the witness has the capacity to express in words his or her memory of the event; (c) whether the witness has the capacity to speak in the formal courtroom setting; (d) whether the witness has the capacity to distinguish truth from falsehood; and (e) whether the witness has the capacity to understand and carry out his or her obligation to speak the truth.

Karpenski, 94 Wn. App. at 101 *abrogated on other grounds by C.J.*, 148 Wn.2d 672.

The child witness *Karpenski* testified during the competency hearing that he and his two-year-old brother were born at the same time. *Id.* at 95-96. He described details of the births that he claimed to remember. *Id.* The trial court explicitly found that the child had testified to an event “that he could not possibly have recalled” but found him competent anyway. *Id.* at 106. The court of appeals found that the lower

court's competency finding was an abuse of discretion because the witness could not distinguish truth from falsity. *Id.*

I.M.R.'s testimony at the competency hearing in Mr. Ragland's case also demonstrated an inability to determine what was true. In fact, the court found that she had testified to "several things that were not true" but found her competent anyway. Findings of Fact and Conclusions of Law, Supp. CP. The court abused its discretion. *Id.*

The trial court abused its discretion by ruling that I.M.R. was competent to testify despite her demonstrated inability to differentiate truth from falsity. *Id.* Mr. Ragland's convictions must be reversed.⁶ *Id.*

IV. THE COURT ERRED BY ORDERING MR. RAGLAND TO PAY OVER \$2,000 IN EXTRADITION COSTS.

Mr. Ragland was found indigent at both the beginning and the end of trial. CP 345; Finding of Indigency, Supp. CP. Still, the court ordered him to pay over \$2,000 in legal financial obligations (LFOs) to cover the cost of his extradition. CP 357.

⁶ Because I.M.R. is not competent, she will not be able to testify on remand. Accordingly, this court should order the trial court to hold a hearing to determine whether her hearsay statements are admissible absent her in-court testimony. The court must determine (a) whether her statements are testimonial under the Confrontation Clause and (b) whether they are sufficiently corroborated under RCW 9A.44.120(2)(b) to be admitted without her testimony. See *Crawford v. Washington*, 541 U.S. 36, 124 S.Ct. 1354, 158 L.Ed.2d 177 (2004); *Matter of Dependency of A.E.P.*, 135 Wn.2d 208, 234, 956 P.2d 297 (1998).

The court appeared to rely on boilerplate language in the Judgment and Sentence stating, essentially, that every offender has the ability to pay LFOs. CP 356. But the court did not conduct any particularized inquiry into Mr. Ragland's financial situation at sentencing or at any other time. RP (8/27/15) 1-33. The court erred by ordering Mr. Ragland to pay the cost of his extradition over his objection absent any indication that he had the means to do so.

The legislature has mandated that "[t]he court *shall not* order a defendant to pay costs unless the defendant is or will be able to pay them." RCW 10.01.160(3); *State v. Blazina*, 182 Wn.2d 827, 841, 344 P.3d 680 (2015) (emphasis added by court).

This imperative language prohibits a trial court from ordering LFOs absent an individualized inquiry into the person's ability to pay. *Id.* Boilerplate language in the Judgment and Sentence is inadequate because it does not demonstrate that the court engaged in an individualized analysis. *Id.*

The court must consider personal factors such as incarceration, the person's other debts (including restitution), and the receipt of means-tested benefits. *Id.*

Here, the court failed to conduct any meaningful inquiry into Mr. Ragland's ability to pay LFOs. RP (8/27/15) 1-33. The court did not consider his financial status in any way.

Had the court considered the factors mandated by the Supreme Court in *Blazina*, Mr. Ragland's lengthy incarceration of at least 318 months would have weighed heavily against a finding that he had the ability to pay LFOs.

In fact, the *Blazina* court suggested that an indigent person would likely never be able to pay LFOs. *Id.* at 839 ("[I]f someone does meet the GR 34 standard for indigency, courts should seriously question that person's ability to pay LFOs"). Mr. Ragland was determined to be indigent at both the beginning and the end of the proceedings in trial court. Finding of Indigency, Supp CP; CP 345.

The court erred by ordering Mr. Ragland to pay over \$2,000 in extradition costs absent any showing that he had the means to do so. *Blazina*, 182 Wn.2d at 841. The order must be vacated and the case remanded for a new sentencing hearing. *Id.*

V. THE COURT ERRED BY SCORING EACH OF MR. RAGLAND'S CONVICTIONS SEPARATELY FOR SENTENCING PURPOSES.

Mr. Ragland was convicted of both rape and incest for alleged intercourse with I.M.R. CP 89, 93. He was also convicted of both child

molestation and incest for alleged sexual contact with S.D.R. CP 91-92, 94. The actions underlying each pair of charges involved the exact same incidents. Still, the sentencing court did not find that any of his convictions comprised the same criminal conduct.

The trial court abused its discretion by failing to consider the issue of same criminal conduct. RCW 9.94A.589(1)(a); *Brunson v. Pierce Cnty.*, 149 Wn. App. 855, 861, 205 P.3d 963 (2009).

Mr. Ragland's defense attorney also provided ineffective assistance at sentencing by stipulating to the state's calculation of his offender score. *State v. Phuong*, 174 Wn. App. 494, 548, 299 P.3d 37 (2013).

A. Mr. Ragland's convictions incest convictions comprised the same criminal conduct as each underlying offense.

A sentencing court must determine the defendant's offender score pursuant to RCW 9.94A.525. The sentencing judge must determine how multiple current offenses are to be scored. Offenses that comprise the "same criminal conduct" are "counted as one crime. RCW 9.94A.589(1)(a). "Same criminal conduct" means "two or more crimes that require the same criminal intent, are committed at the same time and place, and involve the same victim." RCW 9.94A.589(1)(a).

In Mr. Ragland's case, Count I related to alleged intercourse with I.M.R. CP 3. Count V related to the exact same conduct. CP 4.

Likewise, Counts III and IV related to alleged sexual contact with S.D.R. CP 3-4. Count VI, again, punished that same contact. CP 4.

Each of these pairs of offenses involved the same victim, the same criminal intent, and occurred at the same time and place. RCW 9.94A.589(1)(a). The court erred by scoring them separately.

A court's failure to exercise discretion is itself an abuse of discretion. *Brunson*, 149 Wn. App. at 861. Here, the court did not consider whether Mr. Ragland's convictions for Counts I and IV as well as III and VI comprised the same criminal conduct. RP (8/27/15) 1-33. This failure to exercise discretion constitutes an abuse of discretion. *Id.*

The court erred by scoring each of Mr. Ragland's convictions against the others for sentencing purposes. RCW 9.94A.589(1)(a). His case must be remanded for resentencing. *Id.*

B. Mr. Ragland's attorney provided ineffective assistance by failing to argue that count I and V as well as counts III and VI comprised the same criminal conduct for sentencing purposes.

An accused person has a right to the effective assistance of counsel at sentencing. *Gardner v. Florida*, 430 U.S. 349, 358, 97 S.Ct. 1197, 51 L.Ed.2d 393 (1977). Defense counsel provides ineffective assistance by

failing to argue same criminal conduct when warranted. *Phuong*, 174 Wn. App. at 548.

As outlined above, two pairs of Mr. Ragland's convictions should have been counted as the same criminal conduct for sentencing purposes. *State v. Vike*, 125 Wn.2d 407, 412-413, 885 P.2d 824 (1994). Instead of making a same criminal conduct argument, counsel stipulated to the state's calculation of his offender score. CP 324. Counsel provided ineffective assistance by stipulating to an improperly-calculated offender score. *Phuong*, 174 Wn. App. at 548. Mr. Ragland's case must be remanded for correction of the offender score. *Id.*

CONCLUSION

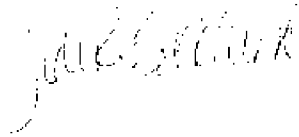
The court's instructions violated Mr. Ragland's constitutional right to a unanimous verdict. The prosecutor committed extensive misconduct during cross-examination and closing argument. The court abused its discretion by finding I.M.R. competent to testify. Mr. Ragland's convictions must be reversed.

In the alternative, the court erred by ordering Mr. Ragland to pay over \$2,000 in extradition costs absent any evidence that he had the means to do so. The court also erred by scoring each of his offenses separately at sentencing. Mr. Ragland's attorney provided ineffective assistance of

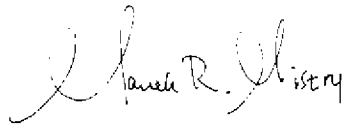
counsel at sentencing by failing to argue that some of his offenses comprised the same criminal conduct. Mr. Ragland's case must be remanded for resentencing.

Respectfully submitted on March 1, 2016,

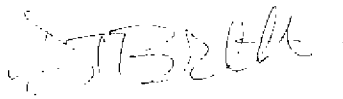
BACKLUND AND MISTRY



Jodi R. Backlund, WSBA No. 22917
Attorney for the Appellant



Manek R. Mistry, WSBA No. 22922
Attorney for the Appellant



Skylar T. Brett, WSBA No. 45475
Attorney for Appellant

CERTIFICATE OF SERVICE

I certify that on today's date:

I mailed a copy of Appellant's Corrected Opening Brief, postage prepaid, to:

John Ragland, DOC #356380
Washington State Penitentiary
1313 North 13th Avenue
Walla Walla, WA 99362

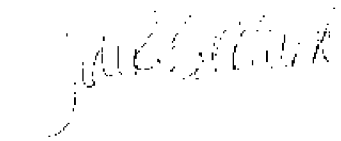
With the permission of the recipient(s), I delivered an electronic version of the brief, using the Court's filing portal, to:

Thurston County Prosecuting Attorney
paoappeals@co.thurston.wa.us

I filed the Appellant's Corrected Opening Brief electronically with the Court of Appeals, Division II, through the Court's online filing system.

I CERTIFY UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT.

Signed at Olympia, Washington on March 1, 2016.



Jodi R. Backlund, WSBA No. 22917
Attorney for the Appellant

BACKLUND & MISTRY

March 01, 2016 - 10:26 AM

Transmittal Letter

Document Uploaded: 7-479630-Appellant's Brief~2.pdf

Case Name: State v. John Ragland

Court of Appeals Case Number: 47963-0

Is this a Personal Restraint Petition? Yes ☐ No

The document being Filed is:

Designation of Clerk's Papers

Supplemental Designation of Clerk's Papers

Statement of Arrangements

Motion: _____

Answer/Reply to Motion: _____

☒ Brief: Appellant's

Statement of Additional Authorities

Cost Bill

Objection to Cost Bill

Affidavit

Letter

Copy of Verbatim Report of Proceedings - No. of Volumes: _____

Hearing Date(s): _____

Personal Restraint Petition (PRP)

Response to Personal Restraint Petition

Reply to Response to Personal Restraint Petition

Petition for Review (PRV)

Other: _____

Comments:

No Comments were entered.

Sender Name: Manek R Mistry - Email: backlundmistry@gmail.com

A copy of this document has been emailed to the following addresses:

paoappeals@co.thurston.wa.us

Lavernc@co.thurston.wa.us